

E-FILED ON

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MICHAEL PETERSEN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In Re:) CASE NO.: BK-S-06-10725 LBR
USA COMMERCIAL MORTGAGE) DEPT. NO.:
COMPANY,)
Debtor.) BK-S-06-10726 LBR
BK-S-06-10727 LBR
BK-S-06-10728 LBR
BK-S-06-10729 LBR

In Re:) Chapter 11
USA CAPITAL REALTY ADVISORS, LLC,)
Debtor.) **Jointly Administered Under**
Case No. BK-S-06-10725 LTR

In Re:) **MICHAEL PETERSEN'S OPPOSITION TO**
USA CAPITAL DIVERSIFIED TRUST) **TWENTY-FOURTH OMNIBUS**
DEED FUND, LLC,) **OBJECTION OF THE USACM**
Debtor.) **LIQUIDATING TRUST TO CLAIMS**
ASSERTING SECURED STATUS

Date: April 26, 2007
Time: 9:30 A.M.

In Re:)
USA CAPITAL FIRST TRUST DEED FUND,)
LLC,)
Debtor.)

In Re:)
USA SECURITIES, LLC,)

Debtor. }

COMES NOW, Creditor, MICHAEL PETERSEN ("PETERSEN"), by and through his counsel of record, O'REILLY LAW GROUP, LLC, hereby files his Opposition to the Twenty-Fourth Omnibus Objection of the USACM Liquidating Trust to Claims Asserting Secured Status.

In support of his Opposition, PETERSEN respectfully states as follows:

I. Introduction

In approximately 1999, PETERSEN invested with USA Commercial Mortgage ("USACM"). His investment was in the amount of \$1.5 million.

Upon learning of USACM filing for bankruptcy and pursuant to Fed. R. of Bankr. P. 3001, PETERSEN filed a proof of claim, Proof of Claim Number 10725-00754. See copy of Proof of Claim attached hereto as **Exhibit A**.

II. Argument

Pursuant to Fed. R. of Bankr. P. 3001, a proof of claim is a written statement setting forth the creditor's claim and shall conform substantially to the appropriate Official Form. See Fed. R. of Bankr. P. 3001(a). PETERSEN's proof of claim is properly executed, conformed to the "Official Form" and was properly filed. Therefore, the claim constitutes *prima facie* evidence of the validity and amount. See 11 U.S.C. 502(a); *U.S. v. Oxford Finance, Inc. (In re Medina)*, 205 B.R. 216 (9th Cir. BAP 1996).

If an objection is then filed as to the proof of claim, the objector must then "produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claims themselves." *U.S. v. Oxford Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996) quoting *In re Murgillo*, 176 B.R. 524, 529 (9th Cir. BAP 1995) *re Holm*, 931 F.2d 620, 623 (9th Cir. 1991).

1 USACM Liquidating Trust has filed an omnibus objection to the secured claim filed by
 2 PETERSEN. It now has the burden of producing evidence, as strong as the proof of claim itself, to
 3 defeat the claim. The burden will not shift back to PETERSEN until such evidence is presented.
 4

5 **III. Conclusion**

6 Therefore, the USACM Liquidating Trust has the burden of producing the required
 7 evidence to defeat the secured claim as filed by PETERSEN.

8 DATED: April 19, 2007

O'REILLY LAW GROUP, LLC

9
 10 By: Claudia K. Cormier

11 John F. O'Reilly, Esq.
 12 Nevada Bar No. 1761
 13 Timothy R. O'Reilly, Esq.
 14 Nevada Bar No. 8866
 15 Claudia K. Cormier, Esq.
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 19 Attorneys for Creditor
 20 MICHAEL PETERSEN
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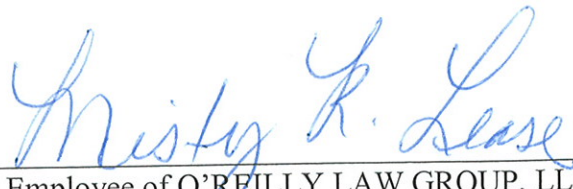
1 **PROOF OF SERVICE**

2 I HEREBY CERTIFY that I am employed in the law offices of O'REILLY LAW GROUP,
 3 LLC and that, on this 19 day of April 2007, served the above and foregoing **MICHAEL**
 4 **PETERSEN'S OPPOSITION TO TWENTY-FOURTH OMNIBUS OBJECTION OF THE**
 5 **USACM LIQUIDATING TRUST TO CLAIMS ASSERTING SECURED STATUS** in
 6 accordance with N.R.C.P. 5(b) by placing a copy of same in a sealed envelope, with postage fully
 7 prepaid thereon, and sending via U.S. mail to the following:
 8

9 Susan M. Freeman, Esq.
 10 Rob Charles, Esq.
 11 Lewis & Roca LLP
 12 3993 Howard Hughes Parkway, Suite 600
 13 Las Vegas, Nevada 89169-5996
 14 Fax: (702) 949-8321
 15 *Counsel for USACM Liquidating Trust*

16 Annette W. Jarvis, Esq.
 17 Ray Quinney & Nebeker P.C.
 18 36 South State Street, Suite 1400
 19 P.O. Box 45385
 20 Salt Lake City, Utah 84145-0385
 21 Fax: (801) 532-7543
 22 *Co-Counsel for Debtors*

23 Lenard E. Schwartz, Esq.
 24 Jeanette E. McPherson
 25 Schwartz & McPherson Law Firm
 26 2850 S. Jones Blvd., Suite 1
 27 Las Vegas, Nevada 89146-5308
 28 Fax: (702) 892-0122
Co-Counsel for Debtors


 An Employee of O'REILLY LAW GROUP, LLC

**USA COMMERCIAL MORTGAGE/MICHAEL PETERSEN
CASE NO.: BK-S-06-10725- LBR**

EXHIBIT “A”

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEVADA		PROOF OF CLAIM	
Name of Debtor: USA COMMERCIAL MORTGAGE COMPANY, et al.		Case Number: BK-S-06-10725-LBR Jointly Administered	
NOTE: See Reverse for List of Debtors and Case Numbers. This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court or BMC Group in this case. <input type="checkbox"/> Check box if this address differs from the address on the envelope sent to you by the court.	
Name of Creditor and Address: MICHAEL PETERSEN C/O JOHN F O'REILLY O'REILLY LAW GROUP LLC NEVADA PROFESSIONAL CENTER 325 S MARYLAND PKWY LAS VEGAS NV 89101-5300		DO NOT FILE THIS PROOF OF CLAIM FOR A SECURED INTEREST IN A BORROWER THAT IS NOT ONE OF THE DEBTORS. If you have already filed a proof of claim with the Bankruptcy Court or BMC, you do not need to file again. THIS SPACE IS FOR COURT USE ONLY	
Creditor Telephone Number (702) 382-2500 Last four digits of account or other number by which creditor identifies debtor:			
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other (describe briefly) Investment in Real Property		<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from: _____ to _____ (date) (date) <input type="checkbox"/> Unremitted principal <input type="checkbox"/> Other claims against servicer (not for loan balances)	
2. DATE DEBT WAS INCURRED: Approximately 1999		3. IF COURT JUDGMENT, DATE OBTAINED:	
4. CLASSIFICATION OF CLAIM. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations. UNSECURED NONPRIORITY CLAIM <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority. UNSECURED PRIORITY CLAIM <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)*, earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		SECURED CLAIM <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief description of collateral: _____ Proceeds <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other from Sale Tanamera Apartments Value of Collateral: \$ 1,500,000.00 Reno, Nevada Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____ <input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) (____). * Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
5. TOTAL AMOUNT OF CLAIM AT TIME CASE FILED: \$ _____ (unsecured) \$ 1,500,000.00 (secured) \$ _____ (priority) \$ 1,500,000.00 (Total)			
<input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.			
6. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.			
7. SUPPORTING DOCUMENTS: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.			
8. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.			
The original of this completed proof of claim form must be sent by mail or hand delivered (FAXES NOT ACCEPTED) so that it is actually received on or before 5:00 pm, prevailing Pacific time, on November 13, 2006 for each person or entity (including individuals, partnerships, corporations, joint ventures, trusts and governmental units). BY MAIL TO: BMC Group Attn: USACM Claims Docketing Center P. O. Box 911 El Segundo, CA 90245-0911		THIS SPACE FOR COURT USE ONLY	
DATE 11/03/06		SIGN and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any). BY HAND OR OVERNIGHT DELIVERY TO: BMC Group Attn: USACM Claims Docketing Center 1330 East Franklin Avenue El Segundo, CA 90245	

Penalty for presenting fraudulent claim is a fine of up to \$500,000 or imprisonment for up to 5 years, or both: 18 U.S.C. §§ 152 AND 3571

INSTRUCTIONS FOR FILING PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to the general rules.

DEFINITIONS

DEBTOR

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the court appointed Claims Agent, BMC Group, at the address listed on the reverse side of this page.

SECURED CLAIM

A claim is a secured claim to the extent that the creditor has a lien on the property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before a bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

UNSECURED CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

UNSECURED PRIORITY CLAIM

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

ITEMS TO BE COMPLETED IN PROOF OF CLAIM FORM (IF NOT ALREADY PROPERLY FILLED IN)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed, the name of the debtor in the bankruptcy case, and the bankruptcy case number.

Debtor Name	Case No
USA Commercial Mortgage Company	06-10725 (LBR)
USA Capital Realty Advisors, L.L.C	06-10726 (LBR)
USA Capital Diversified Trust Deed Fund, L.L.C	06-10727 (LBR)
USA Capital First Trust Deed Fund, L.L.C	06-10728 (LBR)
USA Securities, L.L.C	06-10729 (LBR)

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If (a) anyone else has already filed a proof of claim relating to this debt, (b) if you never received notices from the bankruptcy court about this case, (c) if your address differs from that to which the court sent notice, or (d) if this proof of claim replaces or amends a proof of claim that was already filed, check the appropriate boxes on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in the last four digits of your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

If your claim is a secured claim, check the appropriate boxes in this section. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured (See DEFINITIONS, above).

Unsecured Priority Claim:

If your claim is an unsecured priority claim (See DEFINITIONS, above), check the appropriate boxes in this section, and state the amount entitled to priority. A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

If your claim is an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim" (See DEFINITIONS, above), check the appropriate box in this section. If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount not entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the applicable amounts, including the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Please read - important information: upon completion of this claim form, you are certifying that the statements herein are true.

Be sure to date the claim and place original signature of claimant or person making the claim for creditor where indicated at the bottom of the claim form. Please type or print name of individual under the signature. Be sure all items are answered on the claim form. If not applicable, insert "Not Applicable."

Return claim form and attachments, if any. If you wish to receive an acknowledgement of your claim, please enclose a self-addressed stamped envelope and a second copy with any attachments to the Claims Agent, BMC Group at the address on the front of this form.

06-10725-3501
CLERK
U.S. BANKRUPTCY COURT
DISTRICT OF MICHIGAN
EAST LANSING, MI 48022